

TIFFANY & BOSCO
P.A.

2525 EAST CAMELBACK ROAD
THIRD FLOOR
PHOENIX, ARIZONA 85016
TELEPHONE: (602) 255-6000
FACSIMILE: (602) 255-0192

Mark S. Bosco
State Bar No. 010167
Leonard J. McDonald
State Bar No. 014228
Attorneys for Secured Creditor
09-28357

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

IN RE:

Benny Leland Cotter and Judy Webster Cotter

Debtors.

CitiMortgage, Inc.

Secured Creditor,

vs.

Benny Leland Cotter and Judy Webster Cotter,
Debtors; Office of the US Trustee, Trustee.

Respondents.

No. 2:09-bk-23475-SSC

Chapter 11

**OBJECTION TO CHAPTER 11 PLAN AND
DISCLOSURE STATEMENT**

CitiMortgage, Inc., a secured creditor, by its attorneys, TIFFANY & BOSCO, P.A., hereby objects to the proposed Chapter 11 Plan and Disclosure Statement filed by the Debtors. This Objection is supported by the following Memorandum of Points and Authorities.

....

....

1 Dated this 12th day of April, 2010.

2
3 Respectfully submitted,

4 TIFFANY & BOSCO, P.A.

5 By /s/ MSB #010167
6 Mark S. Bosco
7 Leonard J. McDonald
8 Attorneys for Movant

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 CitiMortgage, Inc., files this response to the proposed 11 Plan of the Debtors. The Chapter 11 Plan
11 provides for an impermissible cram down of CitiMortgage, Inc.'s lien interest on the real property
12 commonly known as 1426 S. Doran, Mesa AZ 85204.

13 CitiMortgage, Inc., objects to the value of the subject real property as the Debtors arbitrarily
14 propose that the fair market value of Secured Creditor's claim is \$50,000.00 without providing any legal
15 or factual authority for such capricious treatment. Such modification is simply not supported by the
16 Bankruptcy Code or the facts of this case. The proposed Plan appears to attempt to cram-down Secured
17 Creditor's claim by scheduling or providing for a total claim to Secured Creditor in the amount of
18 \$50,000.00, while in fact the total claim owed to Secured Creditor is in the amount of \$77,067.11.
19 The Plan proposes monthly payments of \$392.45 per month with a 5.5% interest rate. The remaining
20 portion of the claim, approximately \$27,368.00, is to be treated as a General Unsecured Claim. The
21 Plan proposes to pay the secured claim at an interest rate of 5.5%, which is not reasonable under current
22 conditions and in light of the Debtors' past non-payment history.
23

24 Further, Secured Creditor objects to the proposed sale terms as provided in Debtors' "Plan" to the
25 potential future sale of the property. In the instant, Debtors' cannot provide any escrow documents to
26 assure Movant that the future sale of the property will provide a complete and full payoff of principal,

1 interest, late charges, attorneys' fees and costs, and such other costs, including but not limited to, advances
2 made by beneficiary for taxes and insurance, if applicable, good through the date the loan is paid off. Nor
3 can the Debtors' provide evidence of the property value over a five year period. Currently, Secured
4 Creditor is 100% secured and cannot agree in the present what the property status could be in the future.
5 At such time as Debtors can provide Secured Creditor with documentation which indicates a full payoff of
6 principal, interest, late charges, attorneys' fees and costs, and such other costs, including but not limited to,
7 advances made by beneficiary for taxes and insurance, if applicable, good through the date the loan is paid
8 off, Secured Creditor will re-evaluate their position at that time.

9 CONCLUSION

10 Any Chapter 11 Plan proposed by the Debtor(s) must provide for and eliminate the Objections
11 specified above in order to be reasonable and to comply with applicable provisions of the Bankruptcy
12 Code. Secured Creditor respectfully requests that the confirmation of the Chapter 11 Plan as proposed
13 by the Debtor(s) be denied, or in the alternative, be amended to provide for full payoff of the arrearages
14 owed to the Secured Creditor.

15 WHEREFORE, secured creditor prays as follows:

16 (1) That the 11 Plan be denied.

17 (2) For such other relief as this Court deems proper.

18 DATED this 12th day of April, 2010.

19
20 Respectfully submitted,

21 TIFFANY & BOSCO, P.A.

22 BY /s/ MSB # 010167

23 Mark S. Bosco

24 Leonard J. McDonald

25 Attorneys for Secured Creditor
26

1 COPY of the foregoing mailed
2 April 12, 2010 to:

3 Benny Leland Cotter and Judy Webster Cotter
4 3834 E. Clovis Avenue
5 Mesa, AZ 85206
6 Debtors

7 William R. Richardson
8 1745 South Alma School Rd.
9 Suite 100
10 Mesa, AZ 85210-3010
11 Attorney for Debtors

12 Office of the US Trustee
13 230 North First Ave.
14 Suite 204
15 Phoenix, AZ 85003
16 Trustee

17
18 By: Nicole E. Harrison
19
20
21
22
23
24
25
26